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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,709	10/18/2001	Andrew C. Gilbert	CF/041	8648
1473	7590	07/28/2004	EXAMINER	
FISH & NEAVE 1251 AVENUE OF THE AMERICAS 50TH FLOOR NEW YORK, NY 10020-1105			HEWITT II, CALVIN L	
			ART UNIT	PAPER NUMBER
			3621	

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/982,709

Applicant(s)

GILBERT ET AL.

Examiner

Calvin L Hewitt II

Art Unit

3621

*MW*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***Status of Claims***

1. Claims 1-58 have been examined.

### ***Response to Arguments***

2. The Applicant is of the opinion that the Harrington et al. do not teach "submitting a bid and offer command". Specifically, the Applicant focuses on the supposed lack of an "offer" teaching in Harrington et al. The Examiner respectfully disagrees.

Webster's Ninth New Collegiate Dictionary defines "offer" as a "price named by one proposing to buy: BID". Therefore, claim 1, for example is broad enough to read on a trader submitting a bid to the system to ensure conformity with established parameters (column 10, lines 13-31), generating an offer using the spreadsheet in response to an error command (figure 12; column 10, lines 4-21) or update (column/line 10/5-11/7), confirming a bid (figure 13; column 10, lines 42-50) and then submitting the traders bid that comprises an offer (column/line 10/42-11/19). In the analysis of an Applicant's claims, it is the responsibility of the Examiner to give claims their broadest reasonable interpretation (*In re Pearson*, 181 USPQ 641 (CCPA 1974)). The claims are not written in a way that would exclude a bid that comprises an offer (*In re Pearson*, 181

USPQ 641 (CCPA 1974)). This is also a reasonable construing of the claims as the only entity recited is that of the trader. Further, by referring to a CBOT definition of "offer" or additional and unclaimed processing from the Applicant's disclosure, the Applicant is attempting to narrow the scope of the claim by implicitly adding *disclosed* limitations that have no express basis in the claim (*In re Prater and Wei*, 162 USPQ 541 (CCPA 1969) which is improper. Regarding claim 43, the "command" limitation is broad enough to read on a trader directing a computer to generate an offer, using the calculation spreadsheet, on which a trader's bid is based (figures 10-13; column/line 9/65-11/19).

The Examiner maintains the rejection.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-42 and 55-58 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Harrington et al., U.S. Patent No. 6,161,099.

As per claims 1-42 and 55-58, Harrington et al. teach a market trading system comprising:

- receiving a submission of a bid command (e.g. data related to a tradeable item display) from a trader, generating an offer value based on the submission of a bid command from a trader, generating an offer value based on the submitted bid command, receiving a confirmation command from the trader to confirm the submission and submitting a bid and offer command in response to the confirmation command from the trader (figure 13)
- using an interactive display, displaying current bid and offer data and receiving a selection of a piece of the bid and offer data as the submission of a bid command, displaying the current bid and offer data in a market cell, spread sheet, window, spreadsheet, or webpage (figure 6; column 6, lines 37-65; column/line 9/65-10/14)
- coloring the piece of the bid and offer data, submitting a bid command when the trader selects a bid price as the piece of the bid and offer (figures 6 and 13)
- submitting a bid command when the trader selects a bid price as the piece of the bid and offer data (figure 12)

- entering the submission of the bid command via keyboard and using a mouse (figure 1)
- automatically displaying the interactive interface containing the confirmation command (figure 13)
- overriding the generated bid and offer size and price (figures 12, 13 and 15; column 6, lines 37-65; column/line 9/65-10/14)
- automatically presenting a second interface that relates to the bid and offer command (figures 12 and 13)
- receiving a submission of an offer command via a trading interface, and generating a bid value based on the offer command (figures 6, 12, 13, and 15)
- receiving a selection of an item in the interactive display that corresponds to an offer command (figures 3a, 5, 6, 12 and 13)

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 43-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrington et al., U.S. Patent No. 6,161,099.

As per claims 43-54, Harrington et al. teach a system for generating, overriding and displaying bids and offers (abstract; figures 1-3c and 12-15). Harrington et al. do not specifically recite requesting a confirmation of the submission of an offer command. However, Harrington et al. do teach a request for confirmation of a bid submission (figure 13). Therefore, it would have been obvious to one of ordinary skill to provide offer submitters with a confirmation to allow a submitter to verify the items for auction for which buyers are bidding.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the

mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (703) 308-8057. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James P. Trammell, can be reached at (703) 305-9768.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks  
c/o Technology Center 2100  
Washington, D.C. 20231

or faxed to:

(703) 305-7687 (for formal communications intended for entry and after-final communications),

or:

(703) 746-5532 (for informal or draft communications, please label "PROPOSED" or "DRAFT")



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Hand-delivered responses should be brought to Crystal Park 5,  
2451 Crystal Drive, 7th Floor Receptionist.

Any inquiry of a general nature or relating to the status of this  
application should be directed to the Group receptionist whose telephone  
number is (703)  
308-1113.

Calvin Loyd Hewitt II

July 15, 2004



JAMES P. TRAMMELL  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600